

SENATE BILL 1792
By Person

AN ACT to amend Tennessee Code Annotated, Title 63, relative to medical imaging and radiation therapy.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 63, is amended by adding sections 2 through 14 as a new, appropriately numbered chapter.

SECTION 2. This act may be cited as the "Medical Imaging and Radiation Therapy Quality Assurance Act of 2003".

SECTION 3. The general assembly hereby finds and declares that the citizens of Tennessee are entitled to quality medical imaging and protection from the harmful effects of excessive and improperly performed medical imaging and radiation therapy procedures; and that the quality and protection can be increased by requiring appropriate education and training of persons operating medical and dental equipment used for medical imaging and radiation therapy procedures. It is therefore necessary to establish standards of education and training for these operators to provide for appropriate examination and licensure.

SECTION 4.

(1) "ARRT" means the American Registry of Radiologic Technologists;

(2) "Board" means the medical imaging and radiation therapy board of examiners created by this act;

(3) "Division" means the division of health-related boards of the department of health;

(4) "License" means a document issued by the board authorizing the holder to use radioactive materials, medical imaging or radiation therapy equipment for medical diagnostic or therapeutic purposes in accordance with the provisions of this act;

(5) "Licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic, veterinary medicine, or osteopathy in this state;

(6) "Licensure" means a document issued by the board authorizing the holder to use radioactive materials, medical imaging or radiation therapy equipment for medical diagnostic or therapeutic purposes in accordance with the provisions of this act and is a generic term inclusive of those holding limited licenses;

(7) "Limited license" means that the document issued by the board, authorizing a person to conduct diagnostic radiology examinations, is limited to the performance of specific medical imaging procedures on specific parts of the body;

(8) "Medical imaging" means any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions, including nuclear medicine, but excluding ultrasound, magnetic resonance imaging, and positron emission tomography;

(9) "Radiation therapist" means a person, other than a licensed practitioner, who applies radiation to humans or animals for medical therapeutic purposes;

(10) "Radiation therapy" means any radiation procedure or article intended for the cure, mitigation, or prevention of disease in humans or animals;

(11) "Radiographer" means a person, other than a licensed practitioner, who applies radiation to humans or animals for diagnostic purposes;

(12) "Radiologist" means a physician licensed pursuant to either chapter 6 and 9 of this title who is certified by the American Board of Radiology, or the American Osteopathic Board of Radiology, the British Royal College of Radiology, or the Canadian College of Physicians and Surgeons.

SECTION 5.

(a) Medical imaging and radiation therapy is part of the practice of medicine. Consequently, no person, other than those specifically exempted from medical licensure requirements in chapters 6 and 9 of this title, licensed practitioners, or persons licensed pursuant to this act, shall perform medical imaging or radiation therapy procedures.

(b) A person holding a license issued pursuant to this act shall use radioactive substances or equipment for medical imaging and radiation therapy procedures:

(1) Only for diagnostic or therapeutic purposes;

(2) Only by order or prescription of a licensed practitioner;

(3) Only under the supervision, responsibility, and control of a licensed practitioner; and

(4) Only if the application of a substance or the use of equipment is limited in a manner provided by this act.

(c) Nothing in the provisions of this act relating to medical imaging or radiation therapy shall limit, enlarge, or affect the practice of licensed physicians, osteopaths, dentists, chiropractors, veterinarians, or podiatrists.

SECTION 6.

(a) The board shall consist of thirteen (13) members appointed by the governor who are residents of this state. In making appointments, the governor may select members from a list of three (3) nominees submitted by each of the professional associations represented in the composition of the board. The board shall be composed of two (2) physicians, one (1) of whom shall be licensed pursuant to title 63, chapter 6, and the other shall be licensed pursuant to title 63, chapter 9. One (1) physician member shall be a radiologist; one (1) member a dentist licensed pursuant to title 63, chapter 5; one (1) member a veterinarian licensed pursuant to title 63, chapter 12; one (1) member a podiatrist licensed pursuant to title 63, chapter 3; one (1) member a chiropractor licensed pursuant to title 63, chapter 4; five (5) persons certified by the ARRT, one (1) of whom shall be a radiation therapist and one (1) of whom shall be a radiologic educator; one (1) member shall be a hospital administrator; and one (1) shall be a public member.

(b) The term of office shall be three (3) years, except that, of the members first appointed, four (4) shall be appointed for terms of one (1) year, four (4) for terms of two (2) years, and five (5) for terms of three (3) years. Vacancies shall be filled for an unexpired term only in the manner provided by original appointment. All appointed members shall serve until their successors are appointed.

(c) The public member shall have no association or relationship, financial or otherwise, with a licensed practitioner or person who administers medical imaging or radiation therapy procedures or with any educational institution that qualifies persons for licensure under this act that would prevent or in any way hinder such public member in representing the interest of the public.

(d) The board shall receive all administrative, investigative, and legal support from the division.

(e) The board shall elect as its officers a president, a vice president, and a secretary whose duties and length of terms shall be determined by rules promulgated by the board.

(f) The board, for administrative purposes, shall meet at least twice a year and at such other times as necessary to conduct the business of the board. Meetings shall be at the call of the president.

(g) For purposes of conducting administrative business and promulgating rules and regulations, seven (7) members shall constitute a quorum. A majority vote of the members present at the board's administrative meetings shall be required to authorize board action on any board administrative business.

(h) For purposes of contested case hearings and disciplinary matters, three (3) or more members shall constitute a quorum. The board is authorized, when it is deemed necessary, to split into panels of three (3) or more, each panel to conduct contested case hearings or disciplinary matters. A majority vote of the members present on any duly constituted panel shall be required to authorize board action in disciplinary matters and contested case hearings. A board officer shall have the authority to appoint board members to serve, as necessary, on the panels. The existence of a public member on any panel creates no rights in any individual concerning the composition of any panel in any disciplinary matter or contested case hearing. Notwithstanding the provisions of § 4-5-314(e) to the contrary, unavailability of a member of any panel before rendition of a final order shall not require substitution of another member unless the unavailability results in there being less than the quorum required by this section for contested case hearings or disciplinary matters. Any substitute required shall use any existing record and may conduct any further proceedings as is necessary in the interest of justice.

(i)

(1) The members of the board shall be entitled to a per diem of fifty dollars (\$50.00) for each day's service in attending meetings of the board, and for conducting examinations for professional licensure, and other administrative functions of the board. Necessary reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(2) The board shall pay all money received by it into the state treasury and the commissioner of finance and administration shall make such allotments out of the general fund as the commissioner may deem proper for the necessary and proper expenses of the board, and no expenditure shall be made by the board unless and until such allotment has been made by the commissioner.

Such allotment shall be disbursed under the general budgetary laws of the state.

SECTION 7.

(a) The board shall have the authority, by rules and regulations promulgated in compliance with all requirements of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to:

(1) Establish licensure categories and issue licenses for radiographers, nuclear medicine practitioners, and radiation therapists which shall include provision for persons:

- (A) Who hold current and unrestricted national certification from the ARRT to receive licensure as radiographers and radiation therapists;
- (B) To receive limited X-ray licensure;
- (C) To receive teleradiology licensure; and
- (D) To receive reciprocity licensure.

(2) Establish the minimum qualifications, educational courses, curriculum, hours, and standards which are prerequisite to issuance of all levels and types of licensure established pursuant to subdivision (1);

(3) Establish a grandfathering process and qualifications for licensure as the board deems necessary; provided, that such grandfathering rules shall expire one (1) year from the date upon which they become effective and no further grandfathering rules may be promulgated;

(4) Establish the conditions under which persons shall be entitled to exemption from licensure during training, while waiting to take or receive the results of any required examination, or upon meeting specified minimum educational and clinical qualifications;

(5) Select the examination or examinations to be utilized as the board's licensure examination or examinations and the prerequisites for admission to the examination or examinations. The board is authorized to enter into a contract or agreement with the chosen examination service or services and select an intermediary between the board and the examination service or services to process applicants for the examination or examinations;

(6) Establish any other criteria for issuance of licensure which are reasonably related to the safe and competent performance of medical imaging or radiation therapy;

(7) Establish a mechanism for the board accreditation and renewal of educational courses which are operating for purposes of qualifying individuals for licensure;

(8) Issue accreditation to educational courses that are operating for purposes of qualifying individuals for licensure;

(9) Establish the causes and standards that are grounds for withdrawal of educational course accreditation and the mechanism for that withdrawal;

(10) Establish the procedures, and the fees to be paid, for the following:

(A) Application for licensure;

(B) Renewal or reinstatement of licensure;

(C) Late renewal of licensure;

(D) Application for educational course accreditation;

(E) Renewal or reinstatement of educational course accreditation;

(F) Late renewal of educational course accreditation;

(G) Duplicate or replacement license; and

(H) Exemption issuance;

(11) Establish the continuing education requirements for license holders which shall include the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation, and all fees necessary for implementation of the continuing education process;

(12) Establish what, if any, levels of supervision are required of licensed practitioners utilizing persons holding licensure issued pursuant to this act; and

(13) Regulate the nature, manner, content, and extent of advertising by practitioners who are under the jurisdiction of the board.

(b) The board shall have the authority to:

(1) Conduct disciplinary hearings that shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, except as otherwise provided in this act.

(2) Issue advisory private letter rulings to any affected licensed practitioner or license holder who makes a request regarding any matters within the board's primary jurisdiction. Such private letter ruling shall only affect the

person making such inquiry, and shall have no precedential value for any other inquiry or future contested case that might come before the board. Any dispute regarding a private letter ruling may, if the board chooses to do so, be resolved pursuant to the declaratory order provisions of § 4-5-223.

SECTION 8.

(a) Licenses shall be issued and renewed by the board pursuant to the division's biennial issuance and renewal system.

(b) Any person issued a license to practice who wishes to retire such license shall file with the board an affidavit on a form to be furnished by the board. Such affidavit shall state the date on which the person retired from such practice and such other facts as the board shall deem necessary to verify such retirement.

(c) Any person who wishes to reenter practice must request a reinstatement of licensure.

(d) Any license issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license, and such other information as the board deems necessary. The address contained on the license shall be the address where all correspondence and renewal forms from the board shall be sent during the two (2) years for which the license has been issued. Any person whose address changes from the address contained on the license shall, within thirty (30) days thereafter, notify the board of the address change. The most recent address contained in the board's records for each license holder shall be the address deemed sufficient for purposes of service of process.

SECTION 9. Every person issued a license pursuant to this chapter shall either keep such license prominently displayed in the office or place in which such person practices, or have it stored in a place from which it can be immediately produced upon

request of a patient or a representative of the department of health or the department of environment and conservation.

SECTION 10.

(a) A person whose license has been lost or destroyed may make application to the board for a replacement. Such application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the original license.

(b) Any person whose name is changed by marriage or court order may surrender his or her license and apply to the board for a replacement license.

SECTION 11.

(a) The board has the power and duty to:

(1) Deny, restrict, or condition an application for a license to any applicant who applies for the same through reciprocity or otherwise;

(2) Permanently or temporarily withhold issuance of a license;

(3) Suspend, limit, or restrict a previously issued license for such time and in such manner as the board may determine;

(4) Reprimand, suspend, revoke, or take such other disciplinary action in relation to an applicant or license holder as the board in its discretion may deem proper; or

(5) Permanently revoke a license.

(b) The grounds upon which the board shall exercise such power include, but are not limited to, circumstances wherein the person:

(1) Is guilty of fraud or deceit in the procurement or holding of the license;

(2) Has been convicted of a felony in a court of competent jurisdiction, either within or outside of this state, unless the conviction has been reversed and the holder of the license discharged or acquitted, or if the holder has been

pardoned with full restoration of civil rights, in which case the license shall be restored;

(3) Is or has been afflicted with any medical problem, disability, or addiction, which, in the opinion of the board, would impair professional competence;

(4) Has knowingly aided and abetted a person who is not a license holder, not otherwise authorized pursuant to this chapter, to perform the duties of a license holder under this chapter;

(5) Has undertaken or engaged in any practice beyond the scope of duties permitted a license holder under this chapter;

(6) Has impersonated a license holder or former license holder or is under an assumed name performing the duties authorized to be performed only by a licensed person;

(7) Has been found guilty of violations of a code of ethics which the board shall establish by regulation;

(8) Has applied ionizing radiation without the prescription of a licensed practitioner;

(9) Has interpreted a diagnostic image for a fee;

(10) Is, or has been found guilty of, incompetence or negligence in his or her performance as a license holder;

(11) Is guilty of unprofessional, dishonorable, or unethical conduct;

(12) Has violated or attempted to violate, directly or indirectly, or assisted in or abetted the violation of, or conspired to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any of the rules or regulations promulgated pursuant thereto, or any criminal statute of the state;

(13) Is guilty of habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice;

(14) Has been the subject of disciplinary action by another state or territory of the United States for any acts or omissions which would constitute grounds for discipline of a person licensed in this state. A certified copy of the initial or final order or other equivalent document memorializing the disciplinary action from the disciplining state or territory shall constitute prima facie evidence of violation of this section and be sufficient grounds upon which to deny, restrict, or condition licensure or renewal and discipline a person certified in this state; and

(15) Has used radiation in the treatment of any noncancerous disease, disorder, or condition of the skin without first adequately warning the patient of the extent of any known risk of cancer associated with such treatment or repetition of such treatment. Receipt of such advance warning shall be acknowledged by signature of the patient or, in the case of a minor, the patient's parent or guardian and shall be retained for a period of time prescribed by the board.

(c) In enforcing this section, the board shall, upon probable cause, have authority to compel an applicant or license holder to submit to a mental and physical examination by a designated committee of at least three (3) practicing physicians, including a psychiatrist where a question of mental condition is involved. The applicant or license holder may have an independent medical practitioner present during such examination, and may have an independent physical or mental examination, which examination report shall be filed with the board for consideration. The committee will submit a report of its findings to the board.

(d) Any person who in good faith reports to the board any information that a license holder is or may be in violation of any of the provisions of this chapter shall not be subject to suit for civil damages as a result thereof.

(e)

(1) All materials, documents, and other matters relating to, compiled, or created pursuant to an investigation conducted by the board's investigators within the board's jurisdiction shall be exempt from the public records act, compiled in title 10, chapter 7, part 5 until the filing of a notice of charges. After the filing of a notice of charges, only the information and those materials and documents upon which the charges are based are available for disclosure under the public records act; provided, that the identifying information of the following, as well as all investigator created documents and reports, shall remain confidential at all times unless and until introduced in the proceedings:

(A) A complainant;

(B) Any witness who requests anonymity;

(C) A patient; and

(D) Medical records.

(2) This section does not modify or limit the prehearing discovery provisions set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(f) The board retains jurisdiction to modify or refuse to modify, upon request of any party, any of its orders issued pursuant to this section in compliance with procedures established by the board. The board, pursuant to duly promulgated rules, may, whenever a final order is issued after a disciplinary contested case hearing which contains findings that a licensee or other person has violated any provision of this

chapter, assess the costs, including attorneys fees, directly related to the prosecution of the case against the licensee or person.

(g) Any elected officer of the board, or any duly appointed or elected chair of any panel of the board, or any screening panel, has the authority to administer oaths to witnesses, and upon probable cause being established, issue investigative subpoenas for the attendance of witnesses and the production of documents and records.

SECTION 12.

(a) Any person who practices in this state without having first complied with the provisions of this chapter commits a Class B misdemeanor for each instance of such practice.

(b) Each day any person practices without first obtaining a valid license or renewing a license constitutes a separate offense.

(c) Any person filing or attempting to file, as the person's own, a diploma or license of another or a forged affidavit of identification, commits a Class E felony.

(d) All fines for offenses under this chapter shall be paid over to the board to constitute a part of the funds of the board to be paid into the state treasury.

SECTION 13.

(a) The board, in addition to the powers and duties expressed in this chapter with respect to the denial of licensure is empowered to petition any circuit or chancery court having jurisdiction of any person within this state, who is practicing without a license or to whom a license has been denied, or whose license has been suspended or revoked by the action of the board, to enjoin such person from continuing practice within this state.

(b) Jurisdiction is conferred upon the circuit and chancery courts of this state to hear and determine all such causes as equity causes and exercise full and complete jurisdiction in such injunctive proceedings, but nothing in this section shall be construed

as conferring criminal jurisdiction upon any court not now possessing such criminal jurisdiction, nor shall any such court, as an incident to the injunctive proceedings herein authorized, have the power to assess the criminal penalties hereinafter set out.

SECTION 14.

(a) The board may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious, and to act as a mechanism for resolution of complaints and diversion to professional peer review organizations and impaired professionals associations or foundations of those cases which the board, through established guidelines, deems appropriate.

(b) The activities of the screening panels and any mediation or arbitration sessions shall not be construed as meetings of an agency for purposes of the open meetings act compiled in title 8, chapter 44, and shall remain confidential. The members of the screening panels, mediators, and arbitrators have a deliberative privilege and the same immunity as provided by law for the board, and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution, or civil lawsuit which may result from or be incident to cases processed before them.

(c) The screening panel has the authority to administer oaths to witnesses. Any documents or records produced at the screening panel shall be exempt from the public records act until there is a filing of a notice of charges and such documents or records form the basis for such filing of a notice of charges.

(d) Members of a screening panel may be drawn from among the membership of the board, or members may be appointed by the board. Non-board members shall meet the requirements of membership on the board and may include a consumer member. A

board member serving on a panel shall not participate in a contested case involving any matter heard by the panel.

(e) Each screening panel shall be instructed as to the statutes, rules, regulations, and philosophies of the relevant board as they pertain to disciplinary action and to the procedures to be followed by the panels. Each screening panel shall be provided a copy of Rule 31 of the Rules of the Tennessee Supreme Court for review by members of the screening panel for general guidance as to the principles of mediation and alternative dispute resolution.

(f) The board does not have authority to compel any party to participate in a screening panel, and no prejudice shall be incurred if the party chooses not to participate or to accept the offer to serve on the screening panel.

SECTION 15. Tennessee Code Annotated, Section 63-3-125, is amended by deleting such section in its entirety.

SECTION 16. Tennessee Code Annotated, Section 63-4-119, is amended by deleting such section in its entirety.

SECTION 17. Tennessee Code Annotated, Section 63-6-224, is amended by deleting such section in its entirety.

SECTION 18. Tennessee Code Annotated, Section 63-9-112, is amended by deleting such section in its entirety.

SECTION 19. For purposes of making appointments to the board and the promulgation of rules by the board, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes this act shall take effect on January 1, 2004, the public welfare requiring it.